

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

London, Kentucky

THE EARTHGRAINS COMPANY 1/

Employer

and

BAKERY, CONFECTIONERY, TOBACCO & GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO-CLC

Petitioner

Case 9-RC-17431

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record 2/ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

All production and maintenance employees (maintenance mechanics), including lead persons, shipping (distribution) and receiving employees, sanitation employees, the yard driver and the production scheduler employed by the Employer at its London, Kentucky facility, excluding all office clerical employees, transport drivers and garage mechanics and all professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official Notice of Election in conspicuous

places at least 3 full working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean an entire 24 hour period excluding , Saturdays, Sundays and holidays. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Bakery, Confectionery, Tobacco & Grain Millers International Union, AFL-CIO-CLC.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **August 21, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **August 28, 2000**.



Dated August 14, 2000

at Cincinnati, Ohio

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director, Region 9

440-1760-1580

- 1/ The name of the Employer appears as amended at the hearing.
- 2/ Both parties timely filed briefs which I have carefully considered in reaching my decision.
- 3/ The Employer, a corporation, is engaged in the production of baked goods at its London, Kentucky facility, where it employs approximately 185 employees in the unit found appropriate. Although another labor organization once represented some of the Employer's employees in an unknown unit, there has been no history of collective bargaining affecting any of the employees at this facility since at least 1977. In addition to its London facility, the Employer has a number of other plants located in other cities in the southeastern or southern portion of the United States. The record does not reflect whether any of the employees at the Employer's other locations are represented. It appears from the record that the Employer's corporate headquarters or, at least, some of its corporate officers, are located in Louisville, Kentucky. There is no contention that any employees at the Employer's other locations should be included in the unit.

The Petitioner seeks to represent a unit comprising essentially all production and maintenance employees, including sanitation employees and shipping and receiving employees, employed by the Employer at its London facility. The Employer maintains that, in addition to the employees sought by the Petitioner, the smallest appropriate unit must also include the 29 transport drivers and 6 mechanics employed at or out of the London location. The maintenance employees whom the Petitioner seeks to represent are sometimes referred to as "maintenance mechanics." However, these employees perform plant maintenance work which is entirely different from the mechanical work performed by the "garage mechanics" whom the Petitioner would exclude from the unit. Contrary to the Employer, the Petitioner would also exclude the production scheduler from the unit as an office clerical, managerial or confidential employee. Finally, the Employer employs one yard driver at its London facility. The position with respect to the unit placement of this employee is not clear from the record but it appears that the Petitioner, contrary to the Employer, would exclude the position because it involves driving a truck. The Petitioner is not willing to proceed to an election if the transport drivers and garage mechanics are included in the unit.

Based upon a careful review of the record evidence, I find that a production and maintenance unit, including the sanitation employees and shipping (distribution) and receiving employees, but excluding the transport drivers and garage mechanics constitute an appropriate unit. However, the production scheduler and yard driver must be included in the production and maintenance unit. In agreement with the parties, and as the record discloses that they do not possess or exercise any supervisory authority, I shall also include the lead persons in the unit.

The Employer produces bread, buns and related products at its London facility. In addition, some products, primarily "sweet goods," are transported from the Employer's other bakeries to London for ultimate distribution to its London-based customers. The Employer's plant manager, Richard Crow, is the highest official at the London facility and has overall responsibility for the operation of the plant. The department managers, for the most part, report directly to Crow and, in turn, various first-line supervision reports to their respective department heads. Production Manager Mike Mize is in charge of production and is assisted by four stipulated supervisors, John Noe, W.B. Noe, Delbert Hoskins and Wayne Gilbert. The head of the sanitation department is Mike Summerson, who is the only supervisor employed in the department. The maintenance manager is James Sanders who is assisted by one stipulated

supervisor, Van Johnson. The distribution (shipping) department is under Jeff Buchanan, distribution manager, who is assisted by distribution supervisors, Mike Davis, Bennie Brown and David Smith. In addition, the transportation supervisor, Kenneth Benge, reports to Buchanan. The garage manager, Jason Wentworth, has direct supervisory responsibility for the garage mechanics. Wentworth reports to the sales manager, Jack Halbrook, who, in turn, is responsible to the zone vice-president in charge of sales, Gary Boren, who has his office in Louisville, Kentucky.

The Employer's production operation consists of "straight line" bread and/or bun lines. The bun lines are referred to as a 400-line (400 pieces per minute) and an 800-line (800 pieces per minute). The bread production operation employs approximately 25 employees in operator, mixer, stacker, ladder, relief and lead person positions. The production scheduler also works in bread production. The bun production operation consists of approximately 40 employees employed in sitter, mixer, operator, feeder/stacker, relief and lead person classifications. The employees in the production classifications are responsible for mixing the products and preparing the baked goods. In addition, the Employer's two receiving employees, who are apparently responsible for incoming raw material, are assigned to the production department.

After the bread and buns are baked, cooled, sliced and wrapped, they are removed to another area of the facility, through a walled area, and prepared for shipment. The products are placed into shipping containers and loaded on trailers for distribution to the Employer's customers. The Employer employs approximately 37 employees in its bread distribution operation in bagger, catcher, checker, operator, wrapper, trayer, loader, relief and lead person positions. In bun shipping, the Employer utilizes approximately 42 employees in catcher, wrapper, operator, trayer, loader, relief and lead person classifications. The distribution employees are responsible for bagging and wrapping the products, placing the products on trays and loading the products onto trailers for distribution. The distribution department also employs four "cake loaders" who are responsible for loading sweet goods received from the Employer's other bakeries for delivery to its London customers.

In addition to the production and distribution employees, the Employer has a sanitation department that employs approximately 21 employees. The sanitation employees report directly to the sanitation manager, Mike Summerson. The sanitation employees are responsible for cleaning and sanitizing the equipment and facility from "ceiling to floor." It appears from the record that their primary duties consists of tearing down, sanitizing and cleaning equipment on a regular basis. In this connection, it appears that the majority of the equipment is cleaned and sanitized during plant shutdowns on Monday and Friday nights. In addition, the sanitation employees, on a weekly basis, clean the offices and restroom facilities in the garage.

The Employer's plant maintenance department, under the direct supervision of the maintenance manager, James Sanders, and his assistant, Maintenance Supervisor Van Johnson, employs approximately 14 employees. The maintenance shop is located in a separate building across the street from the bakery. The maintenance employees are sometimes referred to as "maintenance mechanics" and they are solely responsible for plant and machine maintenance as opposed to the mechanical work performed on moving vehicles or trailers by the garage mechanics. The plant maintenance mechanics are responsible for troubleshooting any problems that occur in the bakery as well as the garage on a daily basis. In addition, they are responsible

for performing preventive maintenance on plant equipment which generally takes place on “down days.”

Finally, the Employer employs 29 transport drivers and 6 garage mechanics who perform mechanical work on moving equipment. In addition, the Employer employs a production scheduler, who is assigned to bread production, and a yard driver, who is referred to by the Employer as being in the transportation department but who actually reports to a distribution supervisor. These departments and classifications are in dispute and are discussed in detail later in the decision.

The Employer operates its London facility 24 hours a day, 5 days a week. However, it is not strictly a Monday through Friday operation. The Employer shuts down its operation on Friday afternoon but opens again on Saturday afternoon. The operation is shut down again on Monday and reopens on Tuesday and runs continually until the Friday afternoon shutdown. The Employer’s production and distribution departments, for the most part, operate on a three-shift per day basis. However, the 400-bun line currently has only a two-shift operation. Pursuant to the Employer’s nomenclature, the first shift starts at 6 p.m. with the commencement of the Saturday afternoon start up of the facility. The second shift commences at 4 a.m. and the third shift begins at noon. Although not entirely clear from the record, it appears that the sanitation employees, plant maintenance employees, garage mechanics, receiving employees, the yard driver and production scheduler generally work a day shift. However, the record discloses that plant maintenance employees have, at least on prior occasions, worked at different times and the garage mechanics are subject to be called into work at any time to handle emergencies. The transport drivers have various reporting times discussed in more detail later in the decision. All employees, except the transport drivers, apparently work a scheduled 8-hour day.

All employees are subject to the same general work rules, attend common social functions, and are entitled to the same life insurance, health insurance and benefits. However, the transport drivers and garage mechanics have a different gain sharing program. Except for the transport drivers who are paid on a “trip rate” basis, all employees are hourly paid. The production employees, including the receiving clerks, earn between \$9.55 and \$11.32 per hour. The distribution employees in bread and bun shipping earn between \$9.23 and \$10.81 per hour. The sanitation employees are compensated at a rate of between \$8.07 and \$9.55 per hour and the plant maintenance employees are paid between \$10.15 and \$12.84 per hour. Finally, the garage mechanics earn between \$11.49 and \$12.48 per hour.

Transport Drivers:

The transport drivers, as previously noted, work out of the transportation department and are separately supervised by the transportation supervisor, Kenneth Benge. Although the Employer does not refer to these employees as over-the-road drivers, the record discloses that the transport drivers operate tractor trailer rigs over interstate and state highways. However, they apparently do not spend nights or substantial downtime away from the London facility. The transport drivers are subject to all Department of Transportation (DOT) regulations. Pursuant to DOT requirements, the transport drivers must possess a commercial driver’s license (CDL), maintain logs and comply with all policies regarding work hours and rest periods.

The transport drivers are assigned a specific tractor but the trailers which they use to transport products may vary from trip to trip. The routes serviced by the transport drivers are placed for bid on a yearly basis and are awarded according to seniority. The record discloses that plant employees may bid on and be awarded routes if any are available and approximately 14 or 15 of the transport drivers originally worked in other jobs in the facility. However, in order to obtain a position as a transport driver, an employee must pass a road test and obtain a CDL. There are currently, at least, two plant employees who have CDLs and occasionally move tractors and trailer in the yard but none of the production and maintenance employees driver trucks over the road. Moreover, there is no daily interchange between the transport drivers and other employees. Indeed, plant employees do not even substitute for transport drivers in their absence.

The transport drivers receive their daily assignments by a telephone call after their trailers have been loaded. In this connection, it appears that the drivers are generally aware that they will receive an assignment within a time frame of 2 or 3 hours and the telephone call is made by a supervisor, lead person or loader when everything is ready for the driver to make his deliveries.

After being advised that a load is ready for delivery, the transport drivers report to the facility. The drivers enter through a door in the distribution area and proceed to the transportation supervisor's office located, along with other administrative and management offices, on the second floor of the facility. In order to reach the supervisor's office, the transport drivers must cross a substantial portion of the distribution area. The record reflects that in crossing the distribution floor, the transport drivers may have contact with plant employees.

The transport drivers pick up their paperwork in the transportation supervisor's office along with a "mail bag" in which the drivers carry papers and documents being forwarded from London to delivery points and from delivery points to the London facility. After the drivers pick up their paperwork and "mail bag," they proceed to their tractor and assigned trailer and perform a pre-trip inspection. As part of the inspection, the transport drivers must make sure the product has been properly loaded and secured and if it has not, the drivers may perform, with the assistant of plant employees, the work necessary to secure the load. Upon returning to the facility from making their deliveries, the transport drivers complete their paperwork. They then take the paperwork and "mail bag" and drop them off in the transportation supervisor's office. In doing so, the transport drivers are again required to cross the distribution area of the facility and may have contact with plant employees.

In performing their duties, it is estimated that the transport drivers spend 10 to 15 percent of their time in the plant. However, it is clear that the time they spend in the facility is ancillary to their driving duties, e.g., completing paperwork and pretrip inspections. The transport drivers do not perform any production or other plant work. Indeed, the transport drivers are not even responsible for loading their own trucks, but may, as previously noted, occasionally assist plant employees in making sure the products are properly loaded and secured in the trailer. It is also noted that the Employer utilizes an outside firm to clean its tractors and trailers rather than using its own sanitation or maintenance employees to perform these tasks.

The record disclose that the transport drivers spend approximately 85 to 90 percent of their time operating tractor trailer rigs over interstate and state highways delivering the Employer's product over a wide geographical area encompassing several states. Indeed, it appears that some

drivers may be on the road up to 15 hours at a time which is the maximum permitted under DOT regulations. In addition, some drivers apparently service more than one route. These drivers may service a 3- or 4-hour route one day and a longer route the following day. Each route is assigned a “trip rate,” apparently taking into consideration the distance and number of deliveries, which determines the driver’s compensation. Thus, a driver receives the same “trip rate” regardless of how long it takes him to service the route. The record discloses that transport drivers earn approximately \$550 per week. Except for gain sharing eligibility, which differs slightly for the plant employees, the transport drivers are entitled to the same fringe benefits as all other employees.

A careful review of the record evidence discloses that the transport drivers constitute a separate and distinct group of employees who do not share such a substantial community of interest with the employees sought by the Petitioner to mandate their inclusion in the same unit. In reaching this conclusion, I note that the Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co., et al.*, 91 NLRB 409 (1950). The Act requires only that a unit be appropriate for the purposes of collective bargaining. *The National Cash Register Company.*, 166 NLRB 173 (1967). Although not dispositive, the unit sought by the petitioning union is always a relevant consideration. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109 (1989). If the unit sought by the petitioning labor organization is an appropriate unit, it is irrelevant that a larger unit might also be appropriate. *Pacemaker Mobile Homes, a Division of Lonergan Corporation*, 194 NLRB 742, 743 (1972).

Here, the transport drivers spend a substantial majority of their work time operating tractor trailer rigs over the public highways delivering the Employer’s baked goods. The transport drivers are required to have a valid CDL and are subject to DOT regulations. The transport drives are in a separate department and work under separate supervision. Unlike the production and maintenance employees who are hourly paid, the transport drivers are compensated on a “trip rate” basis. The transport drivers work a unique schedule different from other employees and their gain sharing benefits are computed on a different basis. The fact that they report to the plant facility and are required to cross the distribution floor in order to pick up their paperwork from the transportation office, resulting in some contact with the plant employees, does not constitute a basis for requiring their inclusion in a production and maintenance unit. Although the transport drivers may occasionally be assisted by plant employees in making sure that the products are properly loaded and secured in the trailer, the drivers are not responsible for loading the trailers and they do not perform any plant work. Moreover, there is no daily interchange between the transport drivers and other employees. The fact that several employees who previously worked in other positions in the plant have bid into transport driver positions over a 30-year period does not compel the inclusion of the drivers in the same unit with the production and maintenance employees. The employees who have transferred from plant positions to transport drivers did so on a permanent basis only after passing a road test and obtaining a CDL. Finally, it is noted that the Board, at the request of a petitioning labor organization, has consistently excluded truck drivers, like the transport drivers here, from production and maintenance units. *Lonergan Corporation*, 194 NLRB at 743; *Memphis Furniture Manufacturing Co.*, 259 NLRB 401 (1981); *Chin Industries, Inc.*, 232 NLRB 176, 177 (1977); *Comet Corporation*, 261 NLRB 1414 (1982).

In its brief, the Employer cites *Seaboard Marine, Ltd.*, 327 NLRB No. 108 (1999); *Collins Radio Company*, 206 NLRB 108 (1973) and *Colorado National Bank of Denver*, 204 NLRB 243 (1973), for the proposition that an election should not be directed in a unit too narrow in scope or that constitutes an arbitrary segment of a broader grouping of employees sharing a substantial community of interest. I am in agreement with this general statement. However, contrary to the Employer's position, the record establishes that the transport drivers constitute a distinct grouping of employees with separate interest apart from the production and maintenance employees sought by the Petitioner. See, *Lonergan Corporation*, supra. For example, the transport drivers work in a separate department from the production and maintenance employees, work under separate supervision, spend most of their time on the road, are subject to DOT regulations, and are paid on a different basis and work a different schedule from the other unit employees.

Although the Employer's operation is somewhat integrated as argued by the Employer in its brief, such integration of operations, under the circumstances, is not sufficient to require the inclusion of the transport drivers in the same unit. The precedent cited by the Employer does not require a contrary result. All three cases, *Seaboard Marine, Ltd.*, *Collins Radio Company*, and *Colorado National Bank of Denver*, cited by the Employer, involve situations where the petitioning labor organization sought certain clerical employees while attempting to exclude other clericals that performed similar duties and shared the same working conditions. The Board found that the requested units were too small and were, therefore, inappropriate. Here, the production and maintenance unit, including related plant employees, sought by the Petitioner, is presumptively appropriate and the transport drivers, whom the Petitioner seeks to exclude, constitutes a distinct group of employees with interest separate from those of the unit employees. *Lonergan Corporation*, supra; *Overnite Transportation Company*, supra.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the transport drivers do not share such a substantial community of interest with the other employees sought by the Petitioner to require their inclusion in the same unit. *Comet Corporation*, supra; *Lonergan Corporation*, supra. Accordingly, I shall exclude the transport drivers from the unit.

The Garage Mechanics:

At the time of the hearing, the Employer employed six mechanics, one of whom was only recently hired. The garage mechanics are classified as gasoline or diesel mechanics. The garage mechanics work in a building separate from the main facility; however, they occasionally make repairs at the site of a breakdown or mechanical problem either on the road or in the yard. The plant employees may be required to unload a trailer so repairs can be made and, on those occasions, the garage mechanics may perform their work in close proximity to plant employees. The garage mechanics, when making repairs at the site of a road breakdown, may also work in the presence of a transport driver. However, the garage mechanics perform all mechanical work on the Employer's moving vehicles and trailers and there is no evidence that they are assisted in their work by any other employee. Although a majority of their work consists of repairing and performing preventative maintenance on the tractors and trailers utilized by the transport drivers, the garage mechanics also repair other moving vehicles, including forklifts.

The garage mechanics currently work a standard 8-hour shift from 7 or 8 a.m. until 4 or 5 p.m., but the Employer previously had some mechanics who worked on a second shift and anticipates re-establishing an evening shift in the near future. In addition, a garage mechanic may be contacted by telephone at any time if a tractor breaks down on the road. On those occasions, the mechanic uses a wrecker owned by the Employer to travel to the location of the break down. If the truck cannot be repaired at the site, the mechanic uses the wrecker to tow the tractor to the shop for repairs. The garage mechanics who operate the wrecker on the public highways must have a valid CDL.

The record discloses that the garage mechanics were qualified and experienced at the time they were hired either through vocational training or prior job experience. There are no daily interchanges or transfers between the garage mechanics and other employees. Moreover, the garage employees have little work related contact with other employees, except on those occasions when they make repairs in the presence of transport drivers or plant employees. The garage mechanics do not perform any plant work and other employees do not assist the mechanics in repairing vehicles or trailers.

The garage mechanics are in the sales division for accounting purposes. The mechanics report to the garage manager, Jason Wentworth, who has no other employees under his supervision. Unlike the production and maintenance supervisors who report to department heads who, in turn, report to the plant manager, Wentworth is directly responsible to the sales manager, Jack Halbrook who, in turn, reports to the zone sales manager located in Louisville, Kentucky. The garage mechanics are hourly paid in the narrow range of between \$11.49 and \$12.48 per hour which is at the top of the Employer's hourly pay scale. The garage mechanics wear uniforms. The record is silent concerning whether other employees have uniforms but it appears that the employees who work in the bakery are required to wear hair nets. The garage mechanics participate in gain sharing on the same basis as the transport drivers which differs slightly from the gain sharing available to plant employees. The garage mechanics are entitled to the same life insurance, health insurance and vacation benefits received by all other employees.

A careful review of the record discloses that the garage mechanics, like the transport drivers, constitute a homogeneous grouping of employees with their own community of interest separate and apart from the production and maintenance employees whom the Petitioner seeks to represent. Cf. *Overnite Transportation Company*, supra. As discussed in considering the unit placement of the transport drivers, it is well established that the Act only requires a petitioning union to seek an appropriate unit rather than the ultimate or the most appropriate unit. *Morand Brothers Beverage Co.*, supra; *The National Cash Register Company*, supra. Here, the garage mechanics work in a separate area, under separate supervision and perform work unrelated to the production and maintenance employees. For example, the garage mechanics work only on moving vehicles and trailers and do not perform any of the plant or equipment maintenance even in their own shop. Moreover, the record discloses that the garage mechanics possess specialized skills and there is no interchange between the garage mechanics and other employees. It is, therefore, apparent that the garage mechanics could constitute a separate appropriate unit and are not required to be included in the same unit as the production and maintenance employees sought by the Petitioner. See e.g., *Overnite Transportation Co.*, 322 NLRB at 726; *Overnite Transportation Company*, 325 NLRB 612 (1998).

In its brief, the Employer relies on the same cases and argument which it advanced for the inclusion of the transport drivers. For the same reasons discussed with respect to the transport drivers, the Employer's argument for the inclusion of the garage mechanics lack merit. The garage mechanics work in a separate division under separate supervision. They possess specialized skills and are not assisted by other employees in performing their work. There is no daily interchange between the garage mechanics and other employees. Unlike the clerical employees in *Seaboard Marine*, *Collins Radio* and *Colorado National Bank*, the three cases cited by the Employer in its brief, the garage mechanics here constitute a homogeneous grouping of employees with their own community of interest separate and apart from the production and maintenance employees whom the Petitioner seeks to represent. *Overnite Transportation Company*, 322 NLRB at 7267; *Overnite Transportation Company*, 325 NLRB at 612.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the garage mechanics do not share such a substantial community of interest with the production and maintenance employees sought by the Petitioner to mandate their inclusion in the same unit. *Overnite Transportation Company*, 322 NLRB at 726. Accordingly, I shall exclude the garage mechanics from the unit.

The Yard Driver:

The Petitioner, contrary to the Employer, would apparently exclude the yard driver from the unit. The record is somewhat lacking in details concerning the yard driver, including his name and whether he possesses a CDL and he has not been addressed by the parties in their briefs. However, it is clear from the record that the yard driver does not operate the Employer's vehicles on public roads. The yard driver merely moves tractors and trailers to designated locations on the Employer's property.

Although the yard driver is considered by the Employer to be part of the transportation department "because he drives trucks," the record discloses that he is directly responsible to distribution department supervision rather than to the transportation supervisor. Moreover, the yard driver apparently works a regular schedule and unlike the transport drivers, he is not subject to all DOT regulations. It also appears that the yard driver has more job related contacts with the plant employees, who work with him at the facility, than he has with the transport drivers, who spend most of their time on the road. Finally, the yard driver is hourly paid at the rate of \$10.51 per hour while the transport drivers are compensated entirely based upon the "trip rate" assigned to their route. The yard driver is entitled to the same benefits received by the other unit employees, including gain sharing.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the yard driver's community of interest is more aligned with the plant employees than with the excluded transport drivers. See e.g., *Drexel Enterprises, Inc.*, 180 NLRB 475 (1969). I also note that the Petitioner has not advanced any argument as to why the yard driver should be excluded from the unit. Accordingly, I shall include the yard driver in the unit.

The Production Scheduler:

The Employer employs one production scheduler, whose name is not included in the record, who is assigned to bread production. At the hearing, the Petitioner took the position that the production scheduler was a confidential employee. In its brief, the Petitioner altered its position and additionally maintains that the production scheduler should be excluded from the unit as an office clerical or managerial employee. None of the reasons cited by the Petitioner constitute sufficient basis to exclude the production scheduler from the unit.

The record discloses that the production scheduler is responsible for inputting information regarding orders into a computer system and for establishing a schedule for the production lines. In addition, the production scheduler creates a “dough sheet” and an “oven sheet” used by production employees in mixing dough and wrapping products. Finally, the production scheduler helps start up the production lines and records quality control information. Contrary to the assertions in the Petitioner’s brief, the record discloses that the production scheduler deals almost exclusively with production data and all of his/her work relates to the production process.

The production scheduler does not have any authority over other employees and there is no evidence that he/she deals with labor relations or other employee personnel matters. The production scheduler reports to the production manager, Mike Mize; however, contrary to the assertion in the Petitioner’s brief, there is no evidence that the production scheduler works in the administrative offices with administrative information. Moreover, there is no evidence that the production scheduler is in any way involved in determining the Employer’s business or labor policies. The record discloses that the production scheduler is hourly paid at the rate of \$10.05 per hour and is entitled to the same fringe benefits, including gain sharing, received by other production and maintenance employees.

The Petitioner has not pointed to any evidence in support of its position, at the hearing, that the production scheduler is a confidential employee. Indeed, there is not a scintilla of evidence that the production scheduler meets the Board’s definition of a confidential employee. The Board has defined confidential employees as individuals who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or regularly substitute for employees having such duties. *Chrysler Corporation*, 173 NLRB 1046 (1969); *B.F. Goodrich Company*, 115 NLRB 722 (1956). There is no contention or evidence that the production scheduler works in a confidential capacity to any person who formulates, determines and effectuates management policies with regard to labor relations. Indeed, there is no record testimony that any labor relations matters are formulated or determined at the London facility. Under such circumstances, it is clear that the production scheduler is not a confidential employee. *B.F. Goodrich Company*, supra.

Likewise, there is no evidence to support the Petitioner’s positions, raised in its brief, that the production scheduler is a managerial or office clerical employee. The production scheduler does not formulate or effectuate management policies but merely uses available data to prepare production schedules. The production scheduler does not perform any managerial functions and is clearly not a managerial employee. *Woods Chapel United Super, Inc. d/b/a Jerry’s United Super*, 289 NLRB 125 (1988). Moreover, the record discloses that all the work performed by the production scheduler is related to the production process. In addition, the production scheduler spends a considerable amount of time on the production floor performing production work. For example, the production scheduler helps start the production lines and assists other production employees in obtaining information used for quality control purposes. The production scheduler

spends all of his/her time either performing production work or related functions as opposed to work of an office clerical nature. The record shows that the production scheduler is either a production or plant clerical employee with a substantial community of interest with the other unit employees. *Maryland Cup Corporation*, 171 NLRB 367 (1968). Finally, there is no evidence or contention that the production scheduler has any supervisory authority.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the production scheduler is a production or plant clerical employee whose interests are clearly aligned with those of the production and maintenance employees sought by the Petitioner. In reaching this decision, I note that the Petitioner has not cited any Board authority in support of any of the reasons it advances for excluding the production scheduler from the unit. Accordingly, I shall include the production scheduler in the unit.

Stipulated Supervisors:

The parties stipulated, and the record shows, that the plant manager, Richard Crow; the production manager, Mike Mize; the sanitation manager, Mike Summerson; the maintenance manager, James Sanders; the distribution manager, Jeff Buchanan; the production supervisors, John Noe, W. B. Noe, Delbert Hoskins and Wayne Gilbert; the maintenance supervisor, Van Johnson; the distribution supervisors, Mike Davis, Bennie Brown and David Smith; the transportation supervisor, Kenneth Benge; the garage manager, Jason Wentworth; and the sales manager, Jack Halbrook, have the authority to hire, discharge or discipline employees or to direct their work in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.